IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2756 of 1984
Date of Decision: August 22, 2007

Faridabad Complex Administration Faridabad through its Chief Administrator, Faridabad N.I.T.

.... Appellant

Versus

Ram Saran (deceased) through his LR Chander Bhan s/o Sh. Balbir Singh

.... Respondent

Before: Hon'ble Mr. Justice R.S. Madan

Present: Mr. Ashok Aggarwal, Advocate for the appellant.
Mr. B.L. Gulat, Advocate for the respondent.

R.S. Madan (J).

1. This Regular Second Appeal No.2756 of 1984 is directed against the judgment and decree dated 5.09.1984 rendered by Sh. S.D. Anand, the then Additional District Judge (IV), Faridabad, vide which he dismissed the appeal of the defendant and upheld the judgment of the Trial Court decreeing the suit of the plaintiff/respondent for declaration that the prefactory word 'Rafai Aam' in jamabandi in the column of kastka is wrong and illegal, unlawful and without any basis and against the facts on spot and the same be deleted from that column and jamabandi may be corrected accordingly.

2. The plaintiff is the owner of the suit land as detailed in para No.9 by virtue of Punjab Occupancy Tenant (Vesting of Proprietory Rights)

Act.

3. It is the case of the plaintiff/respondent that he has been in possession of the land comprising khewat No.344 Khatoni No.597, as a tenant (ghair maursi) under shamlat deh on the basis of an oral agreement that he shall not be ejected. The original revenue record state the exclusive cultivating possession of the plaintiff on the suit land as a tenant, but he appellant-defendant got the prefactory words “Rafai Aam” recorded in the revenue record in collusion with the revenue staff. The plaintiff has become statutory owner of the suit land by virtue of coming into force the Punjab Occupancy Tenant (Vesting of Proprietory Rights) Act. It was on these allegations that the plaintiff/respondent sought the declaration.

4. The suit was contested by the defendant/appellant. By filing written statement he had inter alia pleaded therein that the plaintiff/respondent was not a tenant on the land in question and his possession of that land is that of a trespasser. It was asserted that prefactory word has been correctly recorded in the revenue record and other allegations made in the plaint were denied and it was pleaded that suit of the plaintiff/respondent was dismissed.

5. Parties went on trial on the following issues before the Court below :-

1. Whether the plaintiff is in a exclusive cultivating possession as a tenant gair maurusi under shamlat deh since 1942 of the agricultural land? OPP.

2. Whether the plaintiff has become the statutory owner of the suit land as alleged? OPP.

3. Whether the plaintiff has acquired the occupancy right as alleged? OPP.

4. Whether the prefactory word “Rafai Aam” in jamabandies is wrongly entered as alleged? OPP.

5. Whether the suit is not maintainable as alleged OPD.

5-A. Whether the suit is not maintainable as alleged OPD.

5-B. Whether the suit is barred by principle of res judicata? OPD.

6. Relief.

6. Both the parties adduced evidence in support of their case.

7. After evaluating the evidence brought on the record, the learned Trial Court returned the finding of all the issues in favour of the plaintiff against the defendant. The said findings were also upheld by the First Appellate Court on all the issues. Resultantly, the suit of the plaintiff was decreed and appeal filed by the defendant before the First Appellate Court was dismissed.

8. This is another attempt made by the defendant before this Court.

9. At the time of admission of this appeal, it was admitted only on the ground that the Civil Court has no jurisdiction under the Punjab Occupancy Tenant (Vesting of Proprietory Rights) Act. Therefore, the judgment of the two courts below is not sustainable.

10. Learned counsel for the appellant, however, contended that both the courts below have not taken into consideration the definition of the "occupancy tenant" as envisaged in Section 5 of the Punjab Tenancy Act, 1887. Therefore, the finding of the courts below holding the plaintiff to be in possession as tenant and granting him the benefit of Punjab Occupancy Tenant (Vesting of Proprietory Rights) Act, is not sustainable. Both the courts below have taken into consideration Section 3 of the Punjab Occupancy Tenant (Vesting of Proprietory Rights) Act which is reproduced as under:-

3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords.--

Notwithstanding anything to the contrary

contained in any law, custom or usage for the time being in force, on and from the appointed day-

(a) all rights, title and interest (including the contingent interests, if any, recognised by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

(b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;

(d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.

11. Taking into account the provision of Section 3 of the Act, the learned First Appellate Court has referred to relevant revenue records in the form of jamabandi for the period from 1946-1947 (Ex. P/4), jamabandi for the period from 1950-51 (Ex. P/5), jamabandi for the period from 1958-59 (Ex. P/6), jamabandi for the period from 1962-63 (Ex. P/7), jamabandi for the period from 1967-68 (Ex. P/8), jamabandi for the period from 1972-

73 (Ex. P/9), jamabandi for the period from 1977-78 (Ex. P/10). All these documents show the plaintiff-respondent has been recorded as a tenant. Keeping in view the aforesaid provision, the learned First Appellate Court as well as the trial court has categorically observed that the plaintiff is in possession of the suit property since 1942. Admittedly, prior to admission of the appeal, plaintiff was in possession of the suit property. The finding of the trial court cannot be questioned in the Regular Second Appeal as per the embargo put in Section 100 Clause (4) of Civil Procedure Code.

12. However, the only question which remains to be decided by this Court is whether the Civil Court has the jurisdiction to determine the dispute as envisaged in Section 77 (3) (d) of the Act or whether the jurisdiction of the Revenue Court would be barred.

13. This matter came up before the Full Bench of this Court in Shiv Charan versus The Financial Commissioner, Revenue Department, Haryana and others reported in The Punjab Law Reporter Vol.CXXXVIII-(2004-3), where the hon'ble Full Bench observed that the Civil Court alone has the jurisdiction to determine the dispute as envisaged in Section 77 (3) (d) of the Act and jurisdiction of the Revenue Court is barred.

14. In view of the observation made by the Full Bench of this Court, I am of the view that there is no force in this appeal and the same is hereby dismissed.

(R.S. Madan)
Judge

August 22, 2007
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